a chose in action for a valuable consideration is sufficient to support a promise of the debtor to make payment to the assignee. In a later case, *Trow* v. *Braley*,[9] A owed B for work; B assigned the debt to C; C gave notice to A of the assignment and A promised to pay C. *Held:* That there was a good consideration for the promise of A to C, "the assignment of the debt, for a valuable consideration, with notice to the debtor, is a sufficient consideration for his promise to pay the same to the assignee."

In Pennsylvania this view is followed in the case of *DuBarry* v. *Withers*.[10] In an action by an assignee on a chose in action assignable in equity, Read, J., said: "As the assignee is the real owner, it would seem but just, if the debtor chose expressly to promise to the assignee to pay the debt to him, that the assignee might maintain an action against him in his own name." By way of dictum he continued: "And this is clearly the sound rule, for it is a promise to pay the real owner of the debt, requiring no other consideration than the fact that the debtor is morally and equitably bound to pay it to his actual creditor, and is not allowed to discharge himself by paying it to any other person." This view has been followed in New Hampshire[11] and in Maryland.[12]

In none of the above American cases does it appear that the assignee has released his assignor of his liability or that the assignor has released the debtor of his original liability.

Common Law Remedies of the State Courts in Interstate Commerce.

The recent case[1] of *Missouri R. R.* v. *Larabee Flour Co.*, sustained the jurisdiction of the State[2] court to enforce by mandamus the common law duty of a carrier not to discriminate in supplying cars for interstate shipments at an established station. The plaintiff ceased to supply the defendant because of a dispute over prior service. This duty was not

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[9] 56 Vermont, 560.

[10] 44 Pa. 356.

[11] *Currier v. Hodgson*, 3 N. H. 82; *Thompson* v. *Emery*, 7 Foster, 269 (N. H.).

[12] *Allston* v. *Contee*, 4 H. & J. 351.

[1] 211 U. S. 627.

[2] 74 Kans. 808; 88 Pac. 72.

imposed by any State or Federal statute except in so far as general power was given to the Interstate Commerce Commission, and discrimination was declared unlawful by the act of 1887.[3]

The Supreme court based its decision upon the reasoning of those cases[4] in which State legislatures, in the exercise of police power in matters of local concern, had incidentally regulated interstate commerce. The minority, reasoning from similar cases,[5] came to the conclusion that this was a direct regulation in matters of national concern over which control was vested in the Interstate Commerce Commission; that carriers should not be subject to conflicting regulations or be left uncertain as to which government may rightfully assert its controlling authority; and that since the legislature could not legislate concerning the matter, the State courts had no jurisdiction.

The minority contended that this case was controlled by *McNiel* v. *Southern R. R.*[6] In that case, a State commission ordered a carrier to deliver cars to a shipper over a private track to a place off from the regular line of service. It was exercising a legislative function and making rules for the regulation of transportation outside of the common law duties of a carrier and those imposed by Congress in such a way as to burden interstate traffic. In this case, Congress has declared the duty and the State court is merely enforcing that duty under the common law as declared by Congress. Here the carrier has established the track and the station and assumed the duties of a common carrier towards all who apply for transportation. Congress has made the regulation, not the State, and the Court is enforcing such regulation. There is no burden imposed upon interstate traffic by the State.

That the interstate carrier is subject to the common law[7] duties, in so far as they have not been abrogated by Congress, and that both the State and Federal courts have con-

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[3] 24 Stat. at L. 379; 34 Stat. at L. 584.

[4] *Cleveland R. R.* v. *Ill.*, 177 U. S. 514 (1899); *Cooley* v. *Port Wardens*, 12 How. 299 (1851); *Mo. R. R.* v. *Hober*, 168 U. S. 613; (1897).

[5] *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824); *McNeil* v. *Southern R. R.*, 202 U. S. 543 (1905).

[6] *Supra.*

[7] *Murray* v. *R. R.*, 62 Fed. 24 (1894); 92 Fed. 868 (1899); *Western Union* v. *Call.*, 181 U. S. 92 (1901); *Atchinson R. R.* v. *Denver R. R.*, 110 U. S. 667 (1884).

current jurisdiction,[8] subject to the Constitution and laws of the United States, is no longer open to question. Congress itself has declared[9] that "nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

While it is true that the reasonableness of a rate published according to law is conclusive upon both State and Federal courts[10] and that jurisdiction as to its reasonableness exists only in the Commission, and that the common law as to reasonableness of such rate has been abrogated, yet State statutes enforcing the common law liability as to the common carrier's liability for the transportation of goods[11] and passengers[12] have been upheld as well as State statutes requiring reasonable service by interstate carriers;[13] permitting discrimination by telegraph[14] companies in its service; and defining the liability for fires[15] caused by the interstate carrier's negligence, in so far as they were declaratory of the common law duties. But, where such statutes conflicted with the general common law of fellow-servant[16] or were in conflict with the Federal laws,[17] they were held unconstitutional. So also it has been held that the States have control of navigable streams;[18] that they may determine the rights of riparian owners[19] and regulate the construction of bridges,[20] so long as an act of Congress is not in conflict.

It would thus appear that State statutes, which are passed

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[8] *Martin* v. *Hunter,* 1 Wheat. 339 (1816); Cooley on Const. Limitations (6th ed.) 18.

[9] 34 Stat. at L. 387, sec. 22.

[10] *Texas R. R.* v. *Abiline,* 204 U. S. 426 (1906).

[11] *Mo. R. R.* v. *McCann,* 174 U. S. 580 (1899).

[12] *Chicago R. R.* v. *Solan,* 169 U. S. 133 (1898).

[13] *Lake Shore R. R.* v. *Ohio,* 173 U. S. 285 (1899); *Cleveland R. R.* v. *Ill.,* 177 U. S. 514.

[14] *Western Union* v. *Call,* 181 U. S. 92; *Cumberland Co.* v. *Kelly,* 160 Fed. 316 (1908).

[15] *Atchison R. R.* v. *Matthews,* 174 U. S. 96 (1899).

[16] *B. & O. R. R.* v. *Baugh,* 149 U. S. 368 (1893).

[17] *Louisville R. R.* v. *Stock Yards Co.,* 192 U. S. 568 (1904); 212 U. S. 132 (1909).

[18] *St. Clair Co.* v. *Interstate Co.,* 192 U. S. 454 (1904).

[19] *Kansas* v. *Colorado,* 206 U. S. 93 (1906).

[20] *Gilman* v. *Philadelphia,* 3 Wall. 213 (1865).

for the public health, safety, public morals or public convenience,[21] which are declaratory of duties under the general common law or Federal statutes, are constitutional so long as they do not conflict with the Constitution and laws of the United States.

While the action of State legislatures is limited by the limitations of the Commerce clause and the acts of Congress, there is no such limitation upon the power of the State courts. "The limitations," says Mr. Justice Shiras,[22] "upon the legislative power of the nation and of the several States do not necessarily apply to the judicial branches of the National and State governments. The legislature of a State cannot abrogate or modify any of the provisions of the Federal Constitution nor the Acts of Congress touching matters within Congressional control, but the courts of the State, in the absence of prohibitory provision in the Federal constitution or the acts of Congress have full jurisdiction over cases arising under the Constitution and laws of the United States. If the law applicable to a given case is of Federal origin, the legislature of a State cannot abrogate or change it, but the courts of the State may apply and enforce it, and hence the fact that a given subject, like interstate commerce, is beyond State legislative control, does not, *ipso facto,* prevent the courts of the State from exercising jurisdiction." It may be called a ruling principle of the Constitution, to interfere as little as possible between the citizen and his own State government; and hence, with a few safeguards of a very general nature, the executive, legislative and judicial functions are left as they were, as to their own citizens and as to all internal concerns.[23] It is plain, that the framers of the Constitution did contemplate that cases within the judicial cognizance of the United States, not only might but would arise in the State courts in the exercise of their ordinary jurisdiction. With this view the supremacy clause of the sixth article of the Constitution was drawn up. This obligation is imperative upon the State judges, in their official, and not merely in their private, capacities. From the very nature of their judicial duties, they would be called upon to pronounce the law applicable to the case in judgment. They were not to decide merely according to the laws or constitution of the State but

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[21] *Lake Shore R. R.* v. *Ohio,* 173 U. S. 292.

[22] *Murray* v. *R. R.,* 62 Fed. 24.

[23] *Ogden* v. *Saunders,* 12 Wheat. 281 (1827).

according to the constitution, laws and treaties of the United States.[24] This conccurrent jurisdiction of the State courts has been considerably discussed in numerous cases[25] but in no case has it been held that the jurisdiction of the Federal courts over the laws of the United States, is exclusive except where such fact results from express declaration[26] in, or necessary implication[27] from the Constitution and laws of the United States. The present case does not fall under either class so the jurisdiction of the State court properly attaches.

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[24] *Martin* v. *Hunter,* 1 Wheat. 339 (1816).

[25] *Cohens* v. *Va.,* 6 Wheat. 417 (1821); *R. R. Co.* v. *Miss.,* 102 U. S. 135 (1880).

[26] *In re* Hahorst, 150 U. S. 661 (1893).

[27] *Texas R. R.* v. *Abiline, supra.*